

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AUTOMATED ELECTRICAL CONTRACTING
& ENGINEERING, INC.

and

Case 31--CA--17580

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 477, AFL--CIO

By Chairman Stephens and Member Devaney and Raudabaugh
SUPPLEMENTAL DECISION AND ORDER REMANDING

On November 1, 1989, the National Labor Relations Board issued an Order ¹

in this proceeding adopting the findings and conclusions of Administrative Law Judge James M. Kennedy and ordering the Respondent to make Dennis Cranford and Kenneth Blumberg whole for losses resulting from the Respondent's unfair labor practices against them in violation of Section 8(a)(3) and (1) of the National Labor Relations Act. On June 19, 1990, the United States Court of Appeals for the Ninth Circuit entered a judgment enforcing in full the Board's Order.² A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 31 issued a backpay specification and notice of hearing on August 23, 1990, alleging the amount of backpay due the discriminatees and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.

¹ Unpublished.

² No. 90--70102.

By letter dated October 10, 1990, the General Counsel advised the Respondent that no answer had been filed to the backpay specification, and that the General Counsel intended to move for summary judgment. On October 17, 1990, Counsel for the General Counsel extended the date for filing an answer to October 22, 1990, and advised the Respondent that if no answer was filed by that date summary judgment would be sought from the Board. On October 19, 1990, the Respondent filed an answer generally denying the allegations contained in the backpay specification.

On November 2, 1990, the General Counsel filed with the Board a Motion to Transfer Case to and Continue Proceedings Before the Board and for Summary Judgment on Backpay Specification, with exhibits attached. Subsequently, on November 8, 1990, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) ³ of the Board's Rules and Regulations states:

(b) Contents of answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not

³ Formerly Sec. 102.54(b) and (c). The Board amended its Rules governing compliance proceedings effective November 13, 1988. The substance of former Sec. 102.54 has been incorporated into Sec. 102.56 as revised.

suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.--- . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The backpay specification duly served on the Respondent states that, pursuant to Section 102.54 of the Board's Rules and Regulations, the Respondent ''shall file . . . an answer to said Backpay Specification within 21 days from service thereof'' and that ''to the extent that such answer fails to deny allegations of the Backpay Specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.''

In the Motion for Summary Judgment, the General Counsel alleges the Respondent's answer fails to comply with the requirements of Section 102.54(a), (b), and (c) [sic] of the Board's Rules and Regulations as to specificity and that the Board should therefore deem the allegations of the backpay specification to be admitted to be true.

A copy of the answer filed by the Respondent is attached to the Motion for Summary Judgment as an exhibit. The Respondent's answer denies ''all alligation [sic] charges or back pay due.'' The Respondent has not filed any response to the Notice to Show Cause or offered any explanation for its failure to deny specifically the allegations in the backpay specification.

We agree with the General Counsel that the answer constitutes a general denial, which fails to comply with the requirements of Section 102.56(b) and (c) as to those compliance matters within its knowledge. Thus, the answer does not dispute the accuracy of the figures contained in the backpay specification or provide any alternative formula for computing the amounts owed. Because we presume that the hours of pay for wages are within the knowledge of the Respondent and because it has not asserted any lack of knowledge about such matters, we find that its answer is insufficient to deny the allegations of the backpay specification concerning gross backpay. Accordingly, the Board finds all allegations, except for those discussed below, to be true and grants the General Counsel's Motion for Summary Judgment with respect to these allegations.

The General Counsel also seeks summary judgment regarding Cranford and Blumberg's interim earnings. However, the Board has held that a general denial of the allegations concerning interim earnings in a backpay specification is sufficient under Section 102.56 to defeat a motion for summary judgment on that issue, because the amount of interim earnings of a discriminatee is not generally within the knowledge of a respondent. Dews Construction Corp., 246 NLRB 945, 947 (1979); Baumgardner Co., 298 NLRB No. 6 (Mar 30, 1990). We find the Respondent's answer to be a sufficient general denial of those allegations in the backpay specification relating to the interim earnings for Dennis Cranford and Kenneth Blumberg to require a hearing on that issue.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment be granted with respect to all allegations in the backpay specification, except the issue of the interim earnings of Dennis Cranford and Kenneth Blumberg.

IT IS FURTHER ORDERED that this proceeding be remanded to the Regional Director for Region 31 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge, which shall be limited to taking evidence concerning the interim earnings of Dennis Cranford and Kenneth Blumberg.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall apply.

Dated, Washington, D.C. December 31, 1990

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD